

## SEPARATE STATEMENT OF COMMISSIONER MICHAEL J. COPPS

### *Second Further Notice of Proposed Rulemaking, Carriage of Digital Broadcast Signals CS Docket 98-120*

These are tough issues. We start with a must-carry statute that was written in the analog world. Our job is to apply it to digital. That's difficult enough. But then add the fact that broadcasters are facing a hard DTV transition date in less than two years while cable's digital transition could go on much longer, and the web of technical, legal, and policy issues grows ever more complex.

In untangling these issues, I'm guided by two principles. First, Congress intended the fruits of the digital television transition to be shared by all Americans, not just over-the-air viewers. Cable subscribers, like all consumers, deserve to have access to the benefits digital is capable of bringing us. Indeed, given that most households in the U.S. subscribe to cable, it's doubtful that we could have a successful digital television transition without the full participation of the cable industry. I therefore do not treat the digitization of over-the-air broadcasting, cable, and satellite as separate transitions. There is one national digital television transition of which these services are all a part.

Second, while advancing the DTV transition is a national goal, we must take extra care not to leave any of our fellow citizens behind. In the over-the-air context, that means doing everything we can to ensure that no one wakes up on February 18, 2009 to a blank screen. There has been a lot of focus on the broadcast aspects of this. But a similar question confronts analog cable subscribers on that winter's day. When they wake up on February 18, 2009 and turn on their sets, will they still be able to see their local broadcast stations? Many consumers are probably unaware that they may not.

So as we engage in technical discussions about the impact of statistical multiplexing on a broadcaster's bit stream, pore over the legislative history of the 1992 Cable Act, and debate the fine points of First Amendment jurisprudence, we'd better be asking some other questions, too:

1. What about those cable viewers?
2. How do we really make sure *no* viewer is left behind?
3. What policies and programs can get us there?

With that as background, this notice seeks comment on two specific issues – the meaning of the statutory terms “material degradation” and “viewability” in the digital world. As for material degradation, I support the proposal to move to an objective test and away from a subjective “I know it when I see it” standard. I think both of the options identified in the item – a requirement that cable operators pass through all content bits or a requirement that they not discriminate between cable and broadcast programming – have some appeal. In any event, the rule will remain that HD broadcast programming

must be passed through in HD. The only issue is how to measure it. That part of the item advances my first principle set forth above.

“Viewability” is really about my second principle – ensuring that the legitimate expectations of analog cable subscribers are respected, even as we are doing everything we can to move all of our services to digital. The current proposal does that. No cable subscribers should lose a single broadcast service when they wake up on February 18, 2009.

I recognize that some may argue there are practical or constitutional reasons we cannot achieve both goals simultaneously, that choices need to be made between access to digital services and ensuring that no one is left behind. While I don't rule anything out, for those who would make such arguments let me put this as mildly as I can – I will have to be convinced.